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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,682	04/13/2001	Robert Eugene Vogt	29566/KC15,412	4329

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,682

Applicant(s)

VOGT, ROBERT EUGENE

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9-23-02, 1-6-03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8-12 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/13/01, 1/6/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 06 January 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7, 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3761

1. Claims 6-7 and 13-14 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 4.

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

3. In view of the papers filed 9-23-02, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the addition of Sarah Jane Marie Freiburger, Suzanne Marie Schmoker and Mary Anne Bruemmer-Prestley as inventors.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

4. The amendment to pages 5-7 could not be entered since such does not specify what lines of the specified pages the deletion should start and end on.

5. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 1-6-03 have been approved. A proper drawing correction or corrected drawings are required

Art Unit: 3761

in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

6. The drawings are objected to because in Figure 3 as now proposed the portion of the fasteners 31A and 31B between the added solid and dashed lines should not be dotted. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention Section, i.e. a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01; 2) In the amended paragraph on page 11, line 28, line 5 thereof, "side edges 23 and 25 " should be --attachment sites 46-- to be consistent with the Figures and the remainder of the description, i.e. if the sites 46 are adjacent the edges how could the lateral portions be free from attachment also adjacent the side edges? On the last line of the amended paragraph on page 12, line 15, "or caregiver" should be --, caregiver, or manufacturer-- to be consistent with page 12, lines 25-26; 3) Also in claim 8, section (b), lines 1-4 and the description at page 9, the paragraphs at lines 14 and 19 are inconsistent, i.e. the side edges the fasteners are further away from are those of the lateral portions not the front portion. It is noted that the elected species is that of Figures 1-3.

Appropriate correction is required.

Art Unit: 3761

8. Claims 1, 3-5, 8-12 and 21 are objected to because of the following informalities: In claim 8, third to last line, after "weak", insert "--such--". Appropriate correction is required.

9. Claims 1, 3-5, 8-12 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As already discussed above, the description of the lateral section fastening is unclear, i.e. are the inner portions connected farther from the side edges of the outer portions of the lateral portions, note claim 9, or the side edges of the front portion? How can the areas adjacent the first and second side edges be attached at the sites but also be free from attachment?

10. Applicant's remarks with respect to the informal matters on pages 10-12 have been considered but are either deemed moot in that the issue has not been reraised or deemed nonpersuasive for the reasons set forth above.

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 1, 3-5, 8-12 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Romare.

See abstract, Figures, col. 1, line 57-col. 2, line 22, col. 2, lines 58-63, col. 3., line 21-col. 4, line 21, col. 4, lines 29-66, col. 5, lines 6-53, i.e. in Figure 3, lateral sections are 113, 114, inner portion fastening, 115, 116 and points 110 adjacent thereto, outer portion fastening, 110 on left and right sides, there is no attachment between the inner portion fastening and the outer portion

Art Unit: 3761

fastening, back portion/outer portion fastening, col. 3, lines 58-65, strength of attachments, e.g., col. 3, line 66-col. 4, line 62, col. 5, lines 14-33. While the Romare patent is believed to explicitly set forth the strength of attachments, even if not, the structure of the securements and fastenings of Romare is the same as that claimed. Therefore there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure are also inherent in the same structure of Romare, see MPEP 2012.01.

13. Applicant's remarks on pages 12-14 with respect to the prior art have been considered but are wither deemed moot, i.e. with regard to the McNichols patent at this time, or are deemed nonpersuasive, i.e. with regard to Romare. Specifically as discussed supra the claim language and the language added to the specification with regard to the side edges is inconsistent because one refers to the side edges of the front portion while the other refers to the side edges of the outer portions. Also Figure 3 of Romare teaches the claimed invention.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

Art Unit: 3761

1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The amendments to the claim 8 and specification necessitated any new grounds of rejection.

15. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number (703)308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

KMR

June 5, 2003

K. M. Reichle
KARIN REICHEL
SPECIAL AGENT